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Remarks

Claims 1-20 are pending in this application, as shown in the above Listing of Claims. In the Office Action mailed 28 July 2004, the Examiner rejected claims 1-20 under 35 USC § 103 as being unpatentable over DeLorme (US 5,948,040) in view of Battistini (US 6,087,927).

1. The references do not teach all of the elements of the claims.

The independent claims (1 and 18) both consist of four elements, namely code segments that:

- (a) "allows a restaurant diner to order food and drinks without interaction with a human server";
- (b) "provides a virtual server as part of the user interface, for assisting the restaurant diner with the user interface";
- (c) "provides bill payment functionality to allow the restaurant diner to pay for the food and drinks"; and
- (d) "provides entertainment services to occupy the attention of the restaurant diner".

In rejecting claim 1¹, the Examiner asserts that Battistini (column 2, line 5 to column 5, line 55) teaches everything in the claim but for the "without interaction with a human server" limitation in element (a). The Examiner holds that DeLorme (column 6, line 55 to

¹ Claim 18 mirrors claim 1, except that its "bill payment functionality" is not limited to cash, check, credit card and gift certificates. Therefore, the arguments provided here showing that claim 1 should not be rejected apply as well to claim 18.

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column 7, line 65) teaches "choosing and purchasing of merchandise without human intervention". Applicant respectfully disagrees.

A. There is no motivation to combine the references as Battistini teaches away from such a combination.

As to element (a), the Examiner asserts that Battistini teaches a system that "allows a restaurant diner to order food and drinks" while DeLorme teaches a system that enables a consumer to purchase merchandise without interaction with a human server". Applicant agrees that Battistini teaches a system that allows a person to order food and drinks using the drive-through features of a fast food restaurant. Applicant also agrees that DeLorme teaches a travel reservation/information system since in the cited portions of columns 6 and 7, it appears that DeLorme allows the end-user access to the system to research travel information for herself and to even purchase tickets for events in the vacation area.

The Examiner has not offered any reasoning why one skilled in the art would be motivated to combine DeLorme's system of vacation research and reservation with Battistini's drive-through ordering system. Applicant points out that since Battistini teaches away from such a combination, one skilled in the art would not be motivated to combine the references.

Throughout the reference, Battistini strives to allow a person ordering food from a drive-through lane an enhanced ability to interact with the person taking his order. Battistini states that one of the two "well-known disadvantages to a drive-through order placement system [is] ... lack of personal service" (col. 1, lines 41-42). Battistini finds this lack of connection between the customer and the employee taking his order so problematic that Battistini declares a "need exists for an order communication system which provides

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both audio and visual interactive communication between a drive-through customer and an attendant" (col. 2, lines 16-19). Thus, "it is an object of the [Battistini] invention to personalize drive-through service by providing both the customer and the attendant with live video of the other party to the transaction" (col. 2, lines 40-43). To provide this, Battistini "provides the customer with a live video image of the order-taking employee on the customer monitor" (col. 3, lines 55-56).

As the Examiner is aware, courts and the MPEP agree that a prior art reference "must be considered in its entirety, ... including portions that would lead away from the claimed invention" (MPEP 2141.02, citing *W.L. Gore & Assoc. v. Garlock, Inc.*). It is "improper to combine references where the references teach away from their combination" (MPEP 2146, citing *In re Grasselli*). As Battistini's primary goal is to promote the interaction between the consumer and the order-taker, Battistini teaches away from building a system in which there is no interaction between the consumer and the order-taker. For at least these reasons, Applicant requests that the rejections to the claims be withdrawn as it is improper to combine the references.

B. The references do not suggest or teach a virtual server.

Element (b) of the independent claims requires a "virtual server as part of the user interface". An example of such a virtual server is shown in figures 1 through 10 as element 135. The virtual server interacts with the consumer through cartoon balloons (see figure 1, element 105) or voice synthesis. As the present application states, this virtual server assists users in operating the system, offers suggestions, and personalizes the dining experience. The virtual server 135 can be an effective sales device when it is programmed to suggestively sell, or up-sell, to the diners" (page 23, line 19 through page 24, line 1).

The virtual server turns "the dining experience into entertainment" (page 12, line 12).

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Battistini does not provide such a virtual server. Battistini teaches away from a virtual server since, as was discussed above, the primary goal of Battistini is to promote interaction between the consumer and the person taking her order.

Claim 14 provides that the virtual server is programmed with human-like traits. Claim 15 provides that the virtual server teaches the user how to operate the system. Claim 16 provides that the virtual server suggestively sells food or drinks. As there is no teaching of a virtual server in the cited references, nor are the limitations in claims 14, 15 and 16 suggested or taught, Applicant requests that the rejections be withdrawn.

C. The references do not suggest or teach entertainment services.

Element (c) of the independent claims requires providing "entertainment services to occupy the attention of the restaurant diner". Figure 7 shows some of the entertainment services provided by embodiments of the invention. For example, while diners are waiting for their food, they can "play games, find out information about movies, order gift certificates, access messaging, news and limited internet access" (page 25, line 20 to page 26, line 2).

The Examiner asserts that Battistini teaches providing such entertainment services. Logic dictates otherwise. The Battistini device is used by a fast-food restaurant to take orders from people in the drive-through lane. Each consumer in his car approaches the Battistini devices, interacts with the order-taker to place his food order, and then immediately proceeds to the window to pick up his food. Battistini consumer does not have the opportunity to access entertainment services during the brief time he is placing his order.

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Claim 2 provides that the entertainment services include accessing information about movies playing nearby. Claim 3 provides that the entertainment services include games. Claims 4 and 5 provide that the entertainment is being able to access the internet. As Battistini fails to provide any entertainment services, it also fails to teach or suggest claims 2, 3, 4 and 5. Therefore, Applicant requests the withdrawal of the rejections.

D. The references do not suggest or teach the other functions.

Claim 6 provides that the consumer may send e-mail messages while waiting for his food. Claim 7 provides that the consumer may send a message to another person in the restaurant. Claim 8 provides data mining tools to analyze sales data to spot trends. Claims 11 and 20 provide for the use of a customer incentive program. Claim 12 provides for human resource functions. Claim 13 provides for voice recognition and voice synthesis. The references, alone or in combination, fail to teach or suggest these features.


2. Conclusion

As the references fail to teach or suggest many of the elements of the independent and dependent claims, Applicant requests that the rejections be withdrawn and requests that a Notice of Allowance be issued in this case. In the event a telephone conversation would expedite the prosecution of this application, the Examiner may reach the undersigned at 612-607-7508. If any fees are due in connection with the filing of this paper, then the

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Commissioner is authorized to charge such fees including fees for any extension of time, to
Deposit Account No. 50-1901 (Docket 20404-301).

Respectfully submitted,



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